COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 360 of 2002

Smt. Jasvir Kaur
And others. … **Appellants.**

Versus

Mahipal Singh
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 12-09-2002 passed in M.A.C. T. Case No. 08 of 1999, Smt. Jasvir Kaur and others Vs. Mahipal Singh and another, by Motor Accident Claims Tribunal/District Judge Dehradun ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and has awarded Rs.1,27,500/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimant Nos. 1 to 5-appellant no.1 to 4 and Smt. Ranjeet Kaur against the O.P.-respondent no. 3 under Section 166 of the Act. Aggrieved, the claimant-appellants have come up in appeal for enhancement of quantum of compensation on the ground that the learned Tribunal has failed to appreciate the evidence and the multiplier applied by the learned Tribunal is erroneous.

Brief facts giving rise to the present appeal are that Himmat Singh (***the deceased)*** has died as a result of injuries sustained by him in a motor accident on 10-9-98 at about 9 p.m. involving Truck No. DEL-2791, driven rashly and negligently by its driver. It is alleged in the claim petition that on the fateful day the

deceased was coming by scooter No. U.P. 07-5380 along with one Jagmohan from the side of Jakhan River, Dehradun-Hardwar road. As soon as they reached near Resham Majari, Rajesh, Kewal Singh and Keshar singh met them. Rajesh asked them to stop and started talking with them by the side of the road. In the meantime, the said truck going towards Raiwala in high speed and driven rashly and negligently by its driver hit Himmat Singh and others with the result the deceased sustained grevious injuries and died on the spot. Jagmohan also died, while Rajesh was seriously injured. Report of the accident was lodged and post mortem of the dead body of the deceased was also conducted on 11.9.98. Deceased was aged 30 years and was a driver by profession having income worth Rs.4,000/- per month and was also doing agriculture. Hence the claim petition by the dependents and legal heirs of the deceased. All the opposite parties contested the claim petition by filing separate written statements.

Learned Tribunal framed three Issues in the case. On Issue No.1 relating to rash and negligent driving , it has been found that the truck driver and the scooterist both were negligent and the accident in question was result of contributory negligence. The Tribunal has determined rash and negligence on the part of the truck driver to the extent of 75%, while it has been held that the deceased was negligent to the extent of 25%. On Issue No.3, the Tribunal has held that the opposite parties could not prove that the driver was not holding a valid driving licence, therefore, the issue on the point of driving licence was decided accordingly. On Issue No.2 relating to compensation and relief, the Tribunal has observed that the income of the deceased has not been proved by any cogent evidence, therefore, him income was taken to be Rs. 15,000/- per annum as notional income under the provisions of Section 163-A of the Act. Out of this income, 1/3rd was deducted towards personal expenses of the deceased and annual loss of dependency has been determined at Rs. 10,000/-. Considering the age of the deceased between 30-35 years, multiplier of 17 has been applied. The Tribunal has ultimately

decreed the claim petition for the sum of Rs. 1,27,500/- along with interest @ 9% per annum on the basis of 75% contributory negligence, as detailed in the impugned order and directed the Insurance Company to pay the compensation within a period of 45 days.

We have heard learned counsel for the appellants, Sri Rajendra Dobhal at length and have carefully examined the entire material on record including the impugned judgment and award.

It has been vehemently argued before us on behalf of the appellants has that it was proved on record that the deceased was earning Rs. 7,000/- per month at the time of his death, but the Tribunal has not relied on the testimony of P.W2 Gurdeep Singh and the claimant no.1 Jasvir Kaur, who has been examined as P.W.1. We have gone through the statements of both these witnesses on record and have considered the entire facts and circumstances of the case on the point of income of the deceased. It is true that P.W.2 Gurdeep has stated on oath that the deceased was employed as driver by him and he used to pay Rs. 4,000/- per month to the deceased, but this witness has failed to show any document on record to substantiate this fact. No certificate showing the salary of the deceased has been brought on record. For want of reliable evidence on the point of income, the Tribunal was justified to take notional income of the deceased as provided under Second Schedule of Section 163-A of the Act. P.W.1, widow of the deceased, has stated on oath that the deceased was possessing 15 ***Bigha*** land, from which he had income worth Rs. 30,000/-. This witness has further stated that now this land has been given on ***Batai*** (contract of partnership) from which the income has been reduced to Rs. 10,000/- per annum. Here, we can take note of the fact that the claimant-appellants have not filed any documentary evidence in respect of land held by the deceased. It is not the case of the claimants that the deceased was doing the agriculture work exclusively at his own. The land is still there. It is the positive case of the claimants that the deceased was

employed as driver under the employment of witness P.W.2. A person engaged in the regular work of driver cannot be supposed to have been able to devote sufficient time towards agriculture work. Moreover, the land still exists in possession of the claimants and, according to P.W.1, she is getting income of Rs. 10,000/- per annum. In view of above discussion, we are not inclined to accept the argument of the claimant-appellants that the Tribunal has committed any illegality in appreciating the evidence on record. Considering the evidence on record in totality, we fail to take a different view on the point of income of the deceased.

We have also looked into the point of contributory negligence. The First Information Report is considered to be first version of the incident. We have carefully read over the F.I.R. of this case. It is true that it is not required to give all the details in the F.I.R. Undoubtedly, in the present case, the First Information Report has been lodged promptly. It has no where been mentioned in the report that the scooter was stopped/parked on the side of the road. It appears that the deceased, Jagmohan and Rajesh, i.e. all the three persons were travelling on the scooter and out of them, two persons including the deceased had died on the spot, while Rajesh that third occupant sustained injuries and has been examined as eye witness of the accident. The case taken up by the claimants is that Keshar Singh and Kewal Singh met the scooterists in the way and the accident took place while all of them were talking. The fact that only the scooterists had sustained injuries and not the other persons clearly indicate that the scooter in question was not parked or stopped when the accident occurred. Moreover, the site plan of the place of incident prepared by the police also shows that the offending truck hit the scooter on wrong side. All the circumstances coupled with the version of the F.I.R. lead to the positive inference that there has been contributory negligence on the part of the scooterists and since the deceased was driving the said scooter at the relevant time, therefore, the Tribunal was justified in assessing contributory negligence to the extent of 25% on the part of the

deceased. Consequently, on this score, too, the finding of the Tribunal does not call for any interference by this Court.

The last contention of the appellants that multiplier of 18 instead of 17 should have been applied by the Tribunal bears force. It is proved on record that the deceased was in the age group of 25-30 years. There is no evidence contrary to it on record, therefore, use of multiplier of ***17*** by the Tribunal for determining the amount of compensation is erroneous and in our opinion, the multiplier of ***18*** in the present case is proper to arrive at the just compensation, thereby the total amount of compensation comes to Rs. 10,000/- x 18 = Rs. ***1,80,000/-.*** Out of this amount on the basis of 25% contributory negligence on the part of the deceased, amount of Rs. 45,000/- shall be deducted. Thus, the claimants are entitled to the compensation of Rs. 1,80,000 – 45,000= Rs. 1,35,000/-. To this extent alone, the impugned award shall stands modified. Rest part of the impugned order shall remain undisturbed.

No other point was urged or argued before us.

Ultimately, the appeal is partly allowed. The impugned judgment and award is modified and the appellants-claimants are entitled to total compensation of Rs. ***1,35,000/-*** instead of Rs. 1,27,500/-, along with the interest as awarded by the learned Tribunal. No order as to costs.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP